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UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

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UNITED STATES OF AMERICA. 2:03-CR-00534-PMP-RJJ Plaintiff, **ORDER**

MICHAEL CERNAK,

Defendant.

Before the Court for consideration is Defendant Michael Cernak's Motion Pursuant to 28 U.S.C. §2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (Doc. #124). Plaintiff United States filed a Response in Opposition to Defendant's Motion (Doc. #126) on July 27, 2010. Having read and considered the foregoing, the Court finds that Defendant Cernak's Motion (Doc. #124) must be denied. As noted in Plaintiff United States' Response, Defendant Cernak's motion sets forth substantive claims that were not raised on direct appeal, or were rejected on direct appeal.

Grounds One and Three, Defendant Cernak argues that the Court incorrectly applied the United States sentencing guideline range. The same arguments were raised on direct appeal and were rejected. Defendant Cernak has presented no cognizable grounds to warrant further review of these claims. In Ground Two, Cernak maintains that his plea was involuntary and not knowingly made, and in Ground Four, Cernak asserts that he should have been given new

counsel. For the reasons set forth in Plaintiff United States' Opposition (Doc. #126) the Court finds Cernak has procedurally defaulted on these two claims. Finally, the Court finds that Defendant Cernak has failed to demonstrate that his attorney's performance was ineffective under the standards set forth in Strickland v. Washington, 466 U.S. 668 (1984). IT IS THEREFORE ORDERED that Defendant Michael Cernak's Motion Pursuant to 28 U.S.C. §2255 to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody (Doc. #124) is **DENIED**. DATED: August 9, 2010. This m. On United States District Judge